
The Evolution of FIQH

(Islamic Law and the *Madh-habs*)

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PREFACE TO THE THIRD EDITION

A little over a year has passed since the second edition of this book was published, and, by God's grace, copies are no longer available for distribution. However, the public demand for the books has progressively increased, especially since its disappearance from the book stores. My impressions concerning the need throughout the Muslim world for the clarifications and recommendations contained in the text have proven true. Not merely because the book has been a relative commercial success, but because of the very positive intellectual response which I have received from those who have read it. In fact, in order to make the information contained in the text available to an ever wider audience, some readers have already undertaken a Tamil translation of the book, and an Urdu translation has also been commissioned. Consequently, I felt obliged to reprint the book in order to increase the circulation of its contents among English readers and to meet the growing commercial demand for the book.

Due to technical problems faced in the first edition which caused the print on some of the pages to be faded, I decided to re-typeset the whole text. This also gave me an opportunity to apply the transliteration scheme more carefully throughout the text than in the first edition. I also changed the title of the book from *Evolution of the Madh-habs* to *The Evolution of Fiqh (Islamic Law & The Madh-habs)* in order to further clarify the subject matter of the book. With the exception of chapter one (The First Stage), which has been almost

- f) Stagnation and Decline : From the sacking of Baghdad in 1258 CE to the present.

In this work the above mentioned stages in the development of *Fiqh* will be described with special reference to the relevant social and political context of the respective periods. As the reader follows this development, he will be given insight into the evolution of the *Madh-habs* (schools of Islamic legal thought) as well as their contributions to *Fiqh*. Hopefully he will then be able to appreciate the fact that all the *Madh-habs* have contributed in different degrees to the development of *Fiqh*, and that no single *Madh-hab* can properly be claimed to represent Islam or Islamic law in its totality. In other words, *Fiqh* is not determined by any one school of thought acting alone. All *Madh-habs* have been important instruments for the clarification and application of the Shari'ah. Together, *Fiqh* and Shari'ah should be unifying forces that unite all Muslims regardless of place, time or cultural back-ground. In fact, the only infallible *Madh-hab* which deserves to be followed without any questions asked is that of the Prophet Muhammad (ﷺ) himself. Only his interpretations of Shari'ah can be considered divinely guided and meant to be followed until the last day of this world. All other *Madh-habs* are the result of human effort, and thus are subject to human error. Or as Imam ash-Shâfi'i, founder of the Shâfi'i *Madh-hab*, so wisely put it: "There isn't any of us who hasn't had a saying or action of Allah's Messenger elude him or slip his mind. So no matter what rulings I have made or fundamental principles I have established, there will be in them things contrary to the way of Allah's Messenger. However, the correct ruling is according to what the Messenger of Allah said, and that is my true ruling."⁴

⁴ Collected by al-Hâkim with a continuous chain of reliable narrators to ash-Shâfi'i (Ibn 'Asâkir, *Târeekh Dimishq*, vol. 15, sec. 1, p. 3) and Ibn Qayyim, *I'lâm al-Mooqi'een*, (Egypt: al-Hâjj 'Abdus-Salâm Press, 1968, vol. 2, p. 363).

Section One

THE FIRST STAGE: FOUNDATION

The first stage in the development of *Fiqh* covers the era of the Prophet Muhammad ibn 'Abdullah's apostleship (609-632 C.E.) during which the only source of Islamic law was divine revelation in the form of either the Qur'an or the Sunnah [the sayings and actions of the Prophet (ﷺ)]. The Qur'an represented the blueprint for the Islamic way of life, and the Prophet's application of the blueprint in his day-to-day life (i.e. the Sunnah) acted as a detailed explanation of the general principles outlined in the Qur'an, as well as a practical demonstration of their application.¹

The Method of Legislation

Sections of the Qur'an were continuously revealed to the Prophet Muhammad (ﷺ) from the beginning of his prophethood in the year 609 C.E. until shortly before his death (632 C.E.), a period of approximately twenty-three years. The various sections of the Qur'an were generally revealed to solve the problems which confronted the Prophet (ﷺ) and his followers in both Makkah and Madeenah. A number of Qur'anic verses are direct answers to questions raised by Muslims as well as non-Muslims during the era of prophethood. Many of these verses actually begin with the phrase "They ask you about." For example,

¹ *Al-Madkhal*, p. 50.

﴿يَسْأَلُونَكَ عَنِ الشَّهْرِ الْحَرَامِ قِتَالٍ فِيهِ قُلْ قِتَالٌ فِيهِ كَبِيرٌ وَصَدٌّ عَن سَبِيلِ اللَّهِ وَكُفْرٌ بِهِ وَالْمَسْجِدِ الْحَرَامِ وَإِخْرَاجُ أَهْلِهِ مِنْهُ أَكْبَرُ عِندَ اللَّهِ ... ﴿٢١٧﴾﴾

(سورة البقرة ٢ : ٢١٧)

﴿They ask you about fighting in the forbidden months. Say, 'Fighting in them is a grave offence, but blocking Allah's path and denying Him is even graver in Allah's sight'...﴾ (Qur'an 2: 217)

﴿يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا ... ﴿٢١٩﴾﴾

(سورة البقرة ٢ : ٢١٩)

﴿They ask you about wine and gambling. Say, 'There is great evil in them as well as benefit to man. But the evil is greater than the benefit...﴾ (Qur'an 2: 219)

﴿يَسْأَلُونَكَ عَنِ الْمَحِيضِ قُلْ هُوَ أَذَى فَأَعْرِضُوا لِنِسَاءِ فِي الْمَحِيضِ ... ﴿٢٢٢﴾﴾

(سورة البقرة ٢ : ٢٢٢)

﴿They ask you about menses. Say, 'It is harm, so stay away from [sexual relations with] women during their menses...﴾ (Qur'an 2: 222)

A number of other verses were revealed due to particular incidents which took place during the era of the Prophet (ﷺ). An example can be found in the case of Hilâl ibn Umayyah who came before the Prophet (ﷺ) and accused his wife of adultery with another of the Prophet's Companions. The Prophet (ﷺ) said,

"Either you bring proof (i.e., three other witnesses) or you will receive the fixed punishment (of eighty lashes) on your back."

Hilâl said, "O Messenger of Allah! If any of us saw a man on top of his wife, would he go looking for witnesses?" However, the Prophet (ﷺ) repeated his demand for proof. Then angel Gabriel (ﷺ) came

and revealed to the Prophet (ﷺ) the verse:²

﴿وَالَّذِينَ يَرْمُونَ أَزْوَاجَهُمْ وَلَمْ يَكُن لَّهُمْ شَهَادَةٌ إِلَّا أَنفُسُهُمْ فَشَهَدَةُ أَحْوَجٍ أَرْبَعِ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الصَّادِقِينَ ﴿٦﴾ وَالْخَمْسَةَ أَنْ لَعْنَتَ اللَّهِ عَلَيْهِ إِنْ كَانَ مِنَ الْكَاذِبِينَ ﴿٧﴾ وَيَدْرُؤُا عَنْهَا الْعَذَابَ أَنْ تَشْهَدَ أَرْبَعِ شَهَدَاتٍ بِاللَّهِ إِنَّهُ لَمِنَ الْكَاذِبِينَ ﴿٨﴾ وَالْخَمْسَةَ أَنْ غَضِبَ اللَّهُ عَلَيْهَا إِنْ كَانَ مِنَ الصَّادِقِينَ ﴿٩﴾﴾

(سورة النور ٢٤ : ٦-٩)

﴿As for those who accuse their wives and have no evidence but their own, their witness can be four declarations with oaths by Allah that they are truthful and fifth invoking Allah's curse on themselves if they are lying. But the punishment will be averted from the wife if she bears witness four times with oaths by Allah that he is lying, and a fifth oath invoking Allah's curse on herself if he is telling the truth.﴾ (Qur'an 24: 6-9)

The same was the case of Islamic legislation found in the Sunnah, much of which was either the result of answers to questions, or were pronouncements made at the time that incidents took place. For example, on one occasion, one of the Prophet's Companions asked him,

"O Messenger of Allah! We sail the seas and if we make *Wuḍoo'* (ablutions) with our fresh water we will go thirsty. Can we make *Wuḍoo'* with sea water?" He replied, "Its water is pure and its dead (sea creatures) are *Halâl* (permissible to eat)."³

The reason for this method of legislation was to achieve gradation in the enactment of laws, as this approach was more easily acceptable

² Collected by Bukhari, (Arabic-English), vol. 6, Pp. 245-246, hadith no. 271.

³ Collected by Tirmidhi, Nasâ'i, Ibn Mâjah and Abu Dawood, *Sunan Abi Dawood*, (English Trans.), p. 22, hadith no. 38, and authenticated by Shaykh al-Albâni in *Ṣaḥeeḥ Sunan Abi Dawood*, (Beirut, al-Maktab al-Islâmi, 1st ed., 1988), vol. 1, p. 19, hadith no. 76.

by Arabs who were used to complete freedom. It also made it easier for them to learn and understand the laws since the reasons and context of the legislation would be known to them. This method of gradual legislation was not limited to the laws as a whole, but it also took place during the enactment of a number of individual laws. The legislation of *Ṣalâh* (formal prayers) is a good example of gradation in the enactment of individual laws. In the early Makkan period, *Ṣalâh* was initially twice per day, once in the morning and once at night.⁴ Shortly before the migration to Madeenah, five times daily *Ṣalâh* was enjoined on the believers. However, *Ṣalâh* at the time consisted of only two units per prayer, with the exception of *Maghrib* (sunset) prayers which were three units. After the early Muslims had become accustomed to regular prayer, the number of units were increased to four for residents, except for *Fajr* (early morning) prayer and that of *Maghrib*.⁵

General Content of the Qur'an

In Makkah, Muslims were an oppressed minority, whereas after their migration to Madeenah they became the ruling majority. Thus, the revelations of the Qur'an during the two phases had unique characteristics which distinguished them from each other.

The Makkan period (609-622 C.E.)

This period starts with the beginning of the prophethood in Makkah and ends with the Prophet's *Hijrah* (migration) to the city of Madeenah. The revelations of this period were mainly concerned with building the ideological foundation of Islam, *Eemân* (faith), in

⁴ *Al-Madkhal*, Pp. 74-78.

⁵ See Bukhari, (Arabic-English), vol. 1, p. 214, hadith no. 346.

order to prepare the early band of converts for the difficult task of practically establishing the social order of Islam. Consequently, the following basic topics of the Makkan revelations all reflect one aspect or another of principles designed to built faith in God.

a) *Tawḥeed* (Allah's Unity)

Most of the people of Makkah believed in a Supreme Being known by the name "Allah" from the most ancient of times. However, they had added a host of gods who shared some of Allah's powers or acted as intermediaries. Accordingly, Makkan revelations declared Allah's unique unity and pointed out that gods besides Allah are of no benefit.

b) Allah's existence

Some of the early verses presented logical arguments proving the existence of God for the few Makkans who actually denied it.

c) The next life

Since there was no way for human beings to know about the next life, the Makkan revelations vividly described its wonders, its mysteries and its horrors.

d) The people of old

The Makkan verses often mentioned historical examples of earlier civilizations which were destroyed when they denied their obligation to God, like the 'Âd and the Thamood, in order to warn those who rejected the message of Islam and to teach the believers about the greatness of Allah.